**PUBLIC PROSECUTOR**

**v.**

**CHEW SIEW LUAN**

FEDERAL COURT, PENANG
RAJA AZLAN SHAH CJ (MALAYA)
EUSOFFE ABDOOLCADER J
GUNN CHIT TUAN J
[CRIMINAL REFERENCE NO. 1 OF 1982]
12 APRIL 1982

***CRIMINAL PROCEDURE:*** *Bail - Whether the Criminal Procedure Code overrides the Dangerous Drugs Act as to the granting of bail - Offence of trafficking.*

The Public Prosecutor referred the following questions to the Federal Court under s. 66 of the Courts of Judicature Act 1964:

(i) Whether or not s. 388 Criminal Procedure Code (CPC) overrides the provisions of s. 41B of the Dangerous Drugs Act 1952 (Act 234).

(ii) If the answer to question (i) above is in the negative, whether it is right in law for bail to be granted in respect of a person charged for an offence under s. 39B of the Dangerous Drugs Act 1952 (Act 234).

This reference arose as a result of the granting of bail to the respondent by the President, Sessions Court, Penang applying the proviso of s. 388(i) of the CPC pending the hearing of the case against the respondent for an offence under s. 39B of the Dangerous Drugs Act 1952. The Public Prosecutor appealed to the High Court against the order of granting bail but the learned Judge dismissed it stating that s. 41B(1) and (2) of the Dangerous Drugs Act does not override the proviso to s. 388(i) of the CPC.

**Held:**

**[1]** The provisions regulating the granting of bail under the Dangerous Drugs Act must be construed in the context of that Act and not in that of the CPC and to that extent the general provisions of the CPC must *ex necessitate* yield to the specific provision of s. 41B of the Dangerous Drugs Act in that regard.

**[2]** Section 388 of the CPC does not override the provisions of s. 41B of the Dangerous Drugs Act 1952 (Act 234) and accordingly the first question must be clearly in the negative and the second a *non sequitur*.

*[First question answered in the negative. Second question a non-sequitur.]*

**Case referred to:**
*PP v. Chu Beow Hin [1982] CLJ (Rep) 288*

**Legislation referred to:**
Courts of Judicature Act 1964, s. 66
Criminal Procedure Code (FMS Cap 6), ss. 3, 388(i)
Dangerous Drugs Act 1952, ss. 39B, (1)(a), (2), 41B, (1), (1)(c), (2)
Interpretation Act 1967, s. 2

*For the applicant - Shaik Daud (Deputy Public Prosecutor)*
*For the respondent - K. Kumarendran*

**JUDGMENT**

**Raja Azlan Shah CJ (Malaya):**

In this case the following questions were referred to us under s. 66 of the Courts of Judicature Act 1964:

(i) Whether or not s. 388 Criminal Procedure Code overrides the provisions of s. 41B of the Dangerous Drugs Act 1952 (Act 234).

(ii) If the answer to question (i) above is in the negative, whether it is right in law for bail to be granted in respect of a person charged for an offence under s. 39B of the Dangerous Drugs Act 1952 (Act 234).

We answered the first question in the negative and the second was accordingly a *non sequitur*.

On 26 May 1980 a woman *enceinte* with accouchement due in early July 1980, was charged with trafficking in 157.08 grammes of heroin, an offence under s. 39B (1)(a) and punishable under s. 39B(2) of the Dangerous Drugs Act, 1952. The offence carries a punishment for life. On 9 June 1980 the learned President of the Sessions Court granted her bail pending the hearing of the case on an application of the proviso to s. 388(i) of the Criminal Procedure Code which permits the granting of bail to any person under the age of 16 years or any woman or any sick or infirm person accused of a non-bailable offence carrying life imprisonment or death as a penalty.

On appeal by the Public Prosecutor against the order so made granting bail the learned Judge dismissed it stating that s. 41B(1) and (2) of the Dangerous Drugs Act does not override the proviso to s. 388(i) of the Criminal Procedure Code. He seemed to think that s. 41B of the Act should not be construed as having the effect of fettering the discretion to grant bail under the provisions of the Criminal Procedure Code in cases covered by the proviso to s. 388 (i) thereof. Section 41B (1) of the Dangerous Drugs Act provides:

> (1) Bail shall not be granted to an accused person charged with an offence under this Act-
>
> (a) where the offence is punishable with death; or
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> (b) where the offence is punishable with imprisonment for more than five years; or
>
> (c) where the offence is punishable with imprisonment for five years or less and the Public Prosecutor certifies in writing that it is not in the public interest to grant bail to the accused person.
>
> (2) The provisions of subsection (1) shall have effect notwithstanding any other written law or any rule of law to the contrary.

Now, the Criminal Procedure Code (F.M.S. Cap. 6) which came into force on 1 January 1927 is an enactment regulating criminal proceedings in general in the former Federated Malay States. It was amended and extended throughout Malaysia by the Criminal Procedure Code (Amendment and Extension) Act 1976 on 10 January 1976. It cannot be gainsaid that it is a written law within the meaning assigned in s. 2 of the Interpretation Act 1967.

The Dangerous Drugs Act 1952 (Revised - 1980) is an Act specifically designed to regulate the importation, exportation, manufacture, sale and use of, *inter alia*, dangerous drugs, and "to make special provisions relating to the jurisdiction of Courts in respect of offences thereunder and their trial, and for purposes connected therewith". In other words, the Act is in substance a special law passed by Parliament in derogation of the rights of a person

concerning the granting of bail in an otherwise ordinary case. We further note in particular that s. 41B of the Act is an entirely new section introduced by the Dangerous Drugs (Amendment ) Act 1978 (Act A426) and became operative on 10 March 1978. *Generalibus specialia derogant* is a cardinal principle of interpretation. It means that where a special provision is made in a special statute, that special provision excludes the operation of a general provision in the general law. [See also *PP v. Chu Beow Hin* [1982] CLJ (Rep) 288 at p. 291]. The provisions of s. 3 of the Criminal Procedure Code which counsel for the respondent seeks to rely on has no relevance whatsoever to the matter in issue before us.

It would be erroneous to apply expressions used and provisions made in a statute to another and entirely different one in complete disregard of the latter's express stipulations in the light of its specific purpose and object. On the other hand, it is a sound, and, indeed, a well-known principle of construction of a statute that the purport of words and expressions used in a legislative measure must take their colour from the context in which they appear. We do not therefore agree with the learned Judge that it is open to a court to subject the express provisions regarding bail in s. 41B of the Dangerous Drugs Act to the provisions relating thereto in the Criminal Procedure Code. The provisions regulating the granting of bail under the Dangerous Drugs Act must be construed in the context of that Act and not in that of the Criminal Procedure Code and to that extent the general provisions of the Criminal Procedure Code must *ex necessitate* yield to the specific provisions of s. 41B of the Dangerous Drugs Act in that regard. We should perhaps also observe *en passant* that any other construction would result in nullifying the purport and effect of the provisions of s. 41B(1)(c) of the Dangerous Drugs Act and render *otiose* and ineffective a certificate of the Public Prosecutor thereunder that it is not in the public interest to grant bail to a person accused of an offence under the Dangerous Drugs Act punishable with imprisonment for five years or less.

The answer to the first question must accordingly be clearly in the negative and we so decided at the conclusion of argument in this reference.

Also found at [1982] CLJ 354